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February 5, 2003

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Room TW-A325
Washington, DC 20554

Re: Written Ex Parte
CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Dortch:

BellSouth is filing this letter in response to AT&T's letter from Ms. Joan Marsh to Ms. Marlene Dortch, dated November 25, 2002, wherein AT&T supplemented previous ex partes[1] and attempted to support its erroneous contention that AT&T could not economically construct its own interoffice transport facilities unless the total traffic volume would support at least eighteen (18) DS3s. AT&T's discussion is misleading, does not use the appropriate ILEC high capacity special access rates for its comparison and omits pertinent information about an ILEC's actual scale economies for interoffice transport.

AT&T contends that CLECs must have extremely large volumes of traffic in order to justify placing their own interoffice transport facilities versus purchasing interoffice transport at special access rates from ILECs. Indeed, AT&T contends that 18 DS3s, which amounts to more than 12,000 voice channels, is the "the absolute minimum 'crossover' point at which it becomes economically rational for a requesting competitive carrier to consider constructing its own interoffice transport facilities." AT&T's analysis does not reflect the real, market-based evidence of local fiber construction.

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[1] For example, see ex parte letter from Frank S. Simone to Ms. Marlene Dortch, dated November 18, 2002, and attached slide presentation entitled "Determining 'Impairment' Using the Horizontal Merger Guidelines' Entry Analysis" and ex parte letter from C. Frederick Beckner, III, to Ms. Dortch, dated November 14, 2002, and attached white paper entitled "Determining 'Impairment' Using the *Horizontal Merger Guidelines'* Entry Analysis" by Professor Robert D. Willig.

First, AT&T's economic "analysis" runs counter to the fact that AT&T often serves individual large business customers by building a DS-3 link to a single customer.[2] Second, CLECs, including AT&T, have built and now operate multiple competing local fiber networks throughout the country. CLECs now have over 1,800 local fiber networks.[3] There are over 40 of these networks in Atlanta alone. In 45 of the top 50 MSAs, there are at least two, and most often three, companies that provide DS-1 service on a wholesale basis. CLECs provide over 140 million voice grade equivalent lines over their own fiber facilities.[4] That is more voice-grade equivalent lines over these facilities than the Bell companies serve over their own facilities.[5] CLECs report over $10 billion in special access revenues accounting for more than 33% of special access revenues.

AT&T's analysis also fails to account for the fact that ILEC interoffice transport networks are often built and operated at much lower levels of capacity. Indeed, approximately two-thirds (2/3rd) of all BellSouth end offices served with fiber optic facilities are at or below AT&T's fictitious 18 DS3 threshold, and one-third (1/3rd) of those offices utilize three (3) DS3s and below. Therefore, following AT&T's rationale, it was not economical for BellSouth to construct the interoffice facilities to serve approximately 1,200 of its end offices across its nine-state region. AT&T's conclusion thus borders on the absurd.

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[2] Declaration of Anthony Fea and Anthony Giovanucci ¶ 58, attached to AT&T Reply Comments, CC Docket Nos. 01-338 (FCC filed July 17, 2002) (acknowledging that AT&T often "self-provides DS-3 transport.").

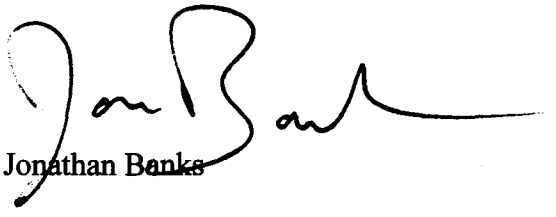
[3] *See* New Paradigm Resources Group, Inc., *CLEC Report 2002* (15th ed. 2002); *see also UNE Fact Report 2002*, App. K

[4] As of June 2002, CLECs served approximately 17-24 million switched access lines using their own local switches, plus approximately 10 million lines through resale or UNE-P – for a total of roughly 30 million switched access lines. *See UNE Rebuttal Report* at 2; *UNE Fact Report 2002* at I-5. Subtracting that 30 million from the 170 million voice-grade equivalent lines that CLECs report yields 140 million special access lines.

[5] FCC, *Statistics of Communications Common Carriers 2001/2002 ed.*, at Table 2.6 (Sept. 2002). Although the BOCs report serving fewer voice-grade equivalent special access line than what the CLECs report, this is likely due to the fact that CLECs have captured many individual customers with very intense demand for high-capacity lines. This reflects the fact that the demand for special access is highly concentrated. Significantly, CLECs have acknowledged that they typically serve their largest customers entirely with their own facilities. *See, e.g.*, Declaration of Anthony Fea and Anthony Giovanucci ¶ 58, attached to AT&T Reply Comments, CC Docket Nos. 01-338 (FCC filed July 17, 2002) (acknowledging that AT&T often "self-provides DS-3 transport.").

AT&T's contention that CLECs are impaired unless they have access to ILECs' transport facilities at TELRIC-based rates ignores compelling market evidence that CLECs have built broad local fiber networks throughout the country, ignores AT&T's own practices and is based on misleading economic assumptions. AT&T's analysis should be rejected. Without access to unbundled transport, CLECs have the choice of utilizing their own networks, the networks of other CLECs, extending the reach of current networks or purchasing special access service from the ILECs. AT&T has provided no persuasive evidence as to why the interoffice transport facility element is not "one for which multiple, competitive supply is unsuitable."[6]

Sincerely,



Jonathan Banks

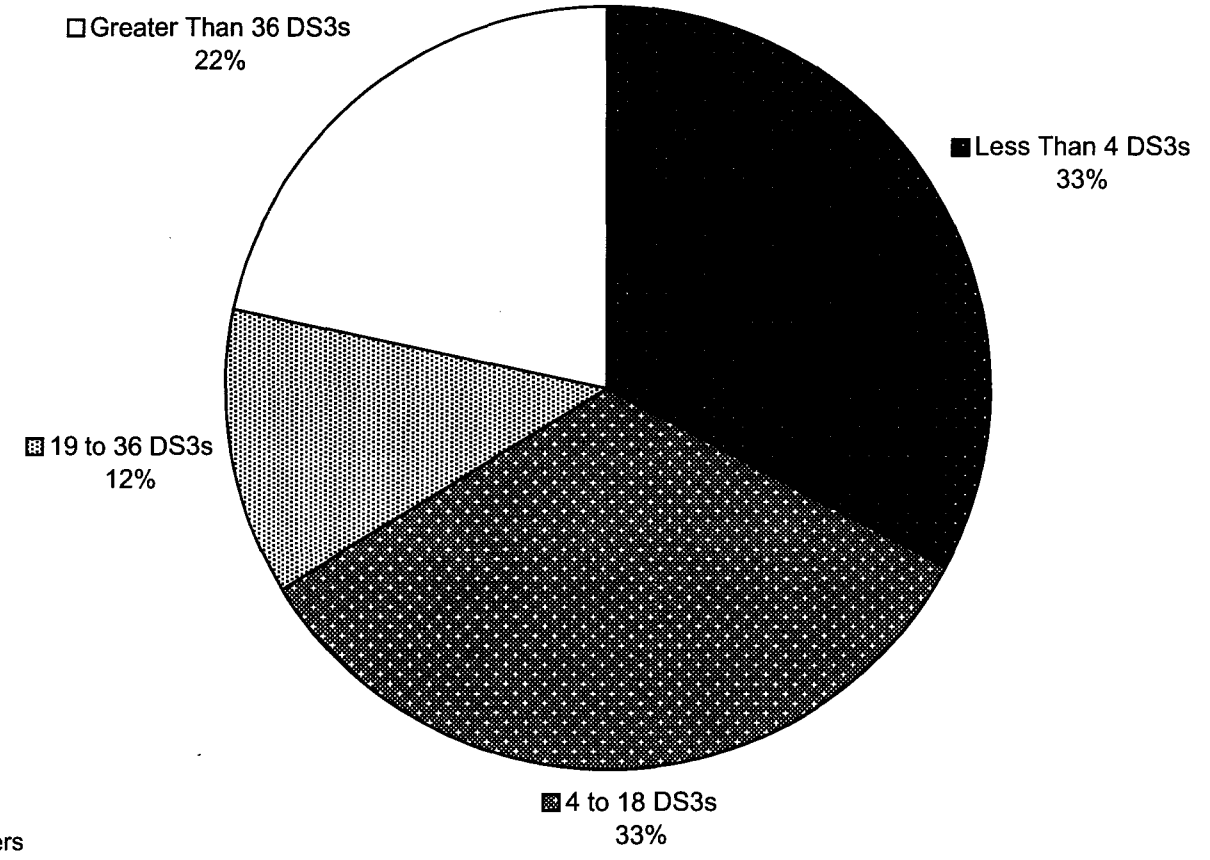
Attachment

[6] *USTA v. FCC*, 290 F.3d 415, 427 (1999).

EXHIBIT WKM-1

DS3 Systems Serving BellSouth End Offices*

(Includes Access and Non-Access)



* 1581 wire centers utilize fiber facilities